

Amendments to Civil Service Rules

Approved by the Civil Service Commission on December 18, 2001,
Effective January 1, 2002

[Added text is underlined. Deleted text is ~~struck-through~~]

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1-8 Prohibited Discrimination

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1-8.4 Bona Fide Occupational Qualification

An appointing authority may establish a bona fide occupational qualification based on religion, national origin, sex, age, marital status, height, or weight, only if it is consistent with applicable law and is approved in advance by the state personnel director. ~~Michigan civil rights commission. If the appointing authority does not obtain advance approval, the employer has the burden of establishing that the qualification is reasonably necessary to its normal operation.~~

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2-5 Employment Preference

2-5.1 Application and Protection

- (a) **Application.** Unless otherwise provided in an approved departmental layoff plan, an employee can apply employment preference only within the employee's current principal department or autonomous entity. However, an employee cannot apply preference against a position or classification that is protected from the application of employment preference.
- (b) **Limited-term appointments.** An employee is not eligible to exercise employment preference or to be placed on a recall list at the end of a limited-term appointment, unless the employee meets one of the following criteria:
- (1) An employee with status gained from an indefinite appointment who accepts or receives a ~~lateral~~ job change to a limited-term appointment may exercise employment preference at the end of the limited-term appointment. Employment preference begins at the last classification level at which the employee achieved status in an indefinite appointment before accepting the limited-term appointment. Employment preference may be exercised only within the principal department or autonomous agency that appointed the employee to the limited-term appointment.
 - (2) A person who is recalled on a limited-term basis is not eligible to exercise employment preference at the end of the limited-term appointment but shall be returned to all recall lists for which the employee is eligible.

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2-16 Assumption into Classified Service

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2-16.5 Pay and Benefits

The state personnel director shall establish the pay and benefits for an employee appointed to a position after consultation with the state employer and the appointing authority in accordance with the following standards:

- (a) **Pay.** The initial rate of pay for an employee whose position is assumed is established at the state pay level closest to, but not less than, the employee's rate of pay before assumption. The state personnel director may, at the request of the state employer or the appointing authority, approve continuation of a rate of pay that exceeds the maximum for the classification if the employee's pay is red-circled.

(b) **Transfer of annual leave and sick leave balances.** If the employee has not been compensated for annual and sick leave balances outstanding on the date of assumption, the state personnel director may approve the transfer of all or a portion of the balances to the classified service. The number of hours transferred cannot exceed the maximum number permitted in the compensation plan. The state of Michigan is not liable for the value of any excess balance that is not transferred.

~~(c) **Longevity.** If the previous employer had a longevity pay plan, the state personnel director may authorize longevity credit for employment before the date of assumption. If the previous employer had no longevity pay plan, the employee is not eligible for longevity credit.~~

(~~c~~d) **Retirement.** The employee is eligible for retirement credit only as provided by law.

2-19 Legal Representation Services

~~An appointing authority, in cooperation with the attorney general, shall pay for or engage the services of an attorney to advise and represent a classified employee in any claim or action against the employee alleging negligence or other actionable conduct. If an employee is named in any civil claim or action alleging negligence or other actionable conduct arising out of employment in the classified service, the employee may request that the appointing authority provide the services of an attorney at state expense to represent the employee. If the appointing authority determines either (1) that the conduct alleged occurred during the course of the employee's employment and within the scope of the authority delegated to the employee or (2) that the employee's conduct occurred during the course of the employee's employment and the employee had a reasonable belief that the employee's conduct was within the scope of authority delegated to the employee, the employee is entitled to legal representation at state expense, subject to the following conditions:~~

(a) ~~If the appointing authority authorizes legal representation at state expense, the appointing authority shall first request that the attorney general represent the employee. If the attorney general declines to represent the employee, the appointing authority may, at its option, either hire an attorney to represent the employee or authorize the employee to hire an attorney. If the employee hires an attorney, the appointing authority shall reimburse the employee for all necessary and reasonable attorney fees and costs incurred. The employee must have been acting in the course of employment when the alleged conduct occurred and had a reasonable basis for believing that the conduct was within the scope of the authority delegated to the employee.~~

(b) ~~The appointing authority is not required to provide legal services at state expense. No legal services are required~~ in connection with prosecution of a criminal suit against an employee.

- (c) Nothing in this rule requires an appointing authority to the reimbursement of an employee or insurer for legal services to which the employee is entitled under a policy of insurance.

4-5 Working out of Class

- (a) **Working out of class assignment.** An appointing authority may temporarily assign an employee to work out of class only if (1) the employee is performing the duties and responsibilities of an existing position or (2) the department of civil service has approved in advance a request for the employee to work out of class. A working-out-of class assignment cannot exceed one year.

- (b) **Working-out-of-class pay.** If an employee is assigned to work out of class for more than 10 ~~or more~~ consecutive workdays, the employee is entitled to supplemental pay and benefits for the temporary assignment in accordance with the civil service rules and regulations.

- (1) **Claims for working-out-of-class pay.** If an employee is assigned to work out of class and does not receive authorized supplemental working-out-of-class pay and benefits, the employee may request a technical working-out-of-class determination.

- (A) **Time limit.** A request for a technical working-out-of-class determination must be filed during the working-out-of-class assignment or within 28 calendar days after the end of the assignment.

- (B) **Back pay.** In a technical working-out-of-class determination, the civil service review officer may award back pay and benefits for working out of class for a maximum of one year before the end of the working-out-of-class assignment. No supplemental working-out-of-class pay or benefits are payable for any period longer than one year even if the employee worked out of class for more than one year.

- (2) **Relation to collective bargaining.** Working out of class is a prohibited subject of bargaining. The exclusive procedure for any employee, including an exclusively represented employee, to bring a claim for working-out-of-class pay or benefits is to file a request for a technical working-out-of-class determination.

- (c) **Exclusions.** An employee in any of the following circumstances is not considered to be working out of class:

- (1) The employee is working in a preauthorized position.
- (2) The employee is occupying a position downgraded for training.
- (3) The employee is occupying a position that is reclassifiable.

- (4) The employee is an overall assistant who normally substitutes for the employee's supervisor.

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4-6 Senior Executive Service (SES)

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4-6.2 Conditions of Employment

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(e) Reappointment.

- (1) **No right to reappointment.** An appointee to the senior executive service has no expectation in, or right to, a reappointment at the expiration of an appointment. There is no requirement that a department provide any reason or justification for not reappointing a person to a further term in the senior executive service. Reappointment is solely within the discretion of the appointing authority. No action by an appointing authority may create an expectation in, or right to, reappointment.

- (2) **Time limits.** If an appointing authority reappoints a senior executive, the appointing authority and the senior executive shall execute a new senior executive agreement to take effect at the expiration of the original appointment, subject to the approval of the state personnel director. A senior executive agreement cannot be executed more than 6 months before the earliest effective date of the appointment. Any senior executive agreement executed more than 6 months before the effective date of the appointment is void and cannot be enforced. Any senior executive agreement that purports to be effective for more than 2 years is void and cannot be enforced.

- (3) **Continuation in position not effective.** A person cannot continue in a senior executive service position without a valid appointment agreement. Continuation in a senior executive service position without a valid appointment agreement approved by the state personnel director, with or without the consent of the appointing authority, cannot create an enforceable appointment.

- (4) **Improper classification.** If the department of civil service determines that a senior executive service position is not properly classified, an appointing authority cannot appoint or reappoint any person to the position or execute a senior executive service position agreement for the position until the department of civil service has approved an updated position description and properly classified the position.

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4-7 Senior Executive Management Assistant Service (SEMAS)

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4-7.2 Conditions of Employment

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(e) Reappointment.

(1) No right to reappointment. An appointee to the senior executive management assistant service has no expectation in, or right to, a reappointment at the expiration of an appointment. There is no requirement that a department provide any reason or justification for not reappointing a person to a further term in the senior executive management assistant service. Reappointment is solely within the discretion of the appointing authority. No action by an appointing authority may create an expectation of, or right to, reappointment.

(2) Time limits. If an appointing authority reappoints a senior executive management assistant, the appointing authority and the senior executive management assistant shall execute a new senior executive management assistant service agreement to take effect at the expiration of the original appointment, subject to the approval of the state personnel director. A senior executive management assistant service agreement cannot be executed more than 6 months before the earliest effective date of the appointment. Any senior executive management assistant service agreement executed more than 6 months before the effective date of the appointment is void and cannot be enforced. Any senior executive management assistant service agreement which purports to be effective for more than 2 years is void and cannot be enforced.

(3) Continuation in position not effective. A person cannot continue in a senior executive management assistant position without a valid appointment agreement. Continuation in a senior executive management assistant position without a valid appointment agreement approved by the state personnel director, with or without the consent of the appointing authority, cannot create an enforceable appointment.

(4) Improper classification. If the department of civil service determines that a senior executive management assistant service position is not properly classified, an appointing authority cannot appoint or reappoint any person to the position or execute a senior executive service position agreement for the position until the department of civil service has approved an updated position description and properly classified the position.

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5-3 Compensation Schedules

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5-3.4 Operation of Compensation Schedules

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- (e) **Salary rate for temporary projects.** Upon request of an appointing authority, the state personnel director may approve alternative or supplemental compensation that exceeds the scheduled maximum rate of pay for an employee assigned to a temporary project. The appointing authority must receive written authorization for the project pay from the department of civil service before the employee is assigned to the project. Temporary project pay may not exceed two years without the written authorization of the state personnel director.

8-7 Appeal to Civil Service Commission

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8-7.3 Time Limits for Appeal to Commission

- (a) **Time limits for appeal to commission.** Except where another rule or a regulation establishes a shorter period, Aa claim of appeal or an application for leave to appeal must be received by the employment relations board within 28 calendar days after the date the final decision of the adjudicating officer is issued.

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9-1 Definitions

Unless the context clearly provides otherwise, the following terms in the civil service rules and regulations are defined as follows:

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Advisory

Advisory means a written statement issued by the civil service commission, state personnel director, or department of civil service to provide future direction, clarification, or other necessary or useful information. An advisory does not have the force and effect of law and does not bind the commission, director, or department.

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Regulation

Regulation means a formal, general written enactment issued by the state personnel director that: (1) exercises, implements, or applies powers granted to the director in article 11, section 5, of the constitution; (2) exercises, implements, or applies powers granted to the director or the department of civil service by civil service rule; or (3) prescribes the procedures or practices of the department of civil service. A regulation is binding on the department of civil service unless the civil service commission finds that the regulation violates a rule. A regulation does not include the following:

~~(a) A determination, decision, or order in a contested case, technical appeal, or individual labor relations matter.~~

~~(b) A determination, declaratory ruling, order, or other disposition by the state personnel director of a particular matter as applied to a specific set of facts.~~

~~(c) A personnel or administrative action by the state personnel director.~~

~~(d) A form with instructions, an interpretive statement, an informational pamphlet, or other material that in itself does not have the force and effect of a regulation but is merely explanatory.~~

~~(e) An advisory.~~

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Rule

Rule means a statement of general applicability approved by the civil service commission and published by the department of civil service that (1) exercises, implements, or applies powers granted in article 11, section 5, of the constitution or (2) prescribes the procedures or practices of the department of civil service. A rule has the force and effect of law unless a court of competent jurisdiction determines that the rule is unconstitutional or otherwise contrary to law.